

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA, : 20-CR-554(WFK)

5 Plaintiff, :

6 -against- : United States Courthouse
Brooklyn, New York

7 JOSEPH MINER, :

8 Defendant. : July 13, 2021
12:00 o'clock p.m.

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11 TRANSCRIPT OF SENTENCING
12 BEFORE THE HONORABLE WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE.

13 APPEARANCES:

14 For the Government: JACQUELYN M. KASULIS
15 Acting United States Attorney
BY: ARTIE McCONNELL
16 JOSHUA G. HAFETZ
17 Assistant United States Attorneys
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18 Brooklyn, New York

19 For the Defendant: BENJAMIN SILVERMAN, ESQ.
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24 Proceedings recorded by mechanical stenography, transcript
25 produced by computer-aided transcription.

1 THE CLERK: Criminal cause for sentencing, docket
2 number 20-CR-00554, United States of America versus Joseph
3 Miner.

4 Would each counsel please identify themselves and
5 state the names of their respective clients for the record
6 beginning with the government?

7 MR. McCONNELL: Your Honor, good afternoon. Artie
8 McConnell and Joshua Hafetz for the United States. I'm joined
9 by Jamie Turton for the Department of Probation.

10 THE COURT: Good afternoon. You may be seated.
11 Ladies and gentlemen of the public, you may be
12 seated as well.

13 MR. SILVERMAN: Good afternoon, Your Honor.
14 Benjamin Silverman for Joseph Miner who is seated to my right.

15 THE COURT: Good afternoon. You may be seated as
16 well, gentlemen.

17 Those of you in the well who have been fully
18 vaccinated, under the court rules, you may remove your mask.
19 If you have not been fully vaccinated, please continue to have
20 your masks up pursuant to our court rules.

21 We are here today on the case United States of
22 America against Joseph Miner, 20-CR-554.

23 Mr. Miner, have you had an opportunity to review
24 carefully and have you, in fact, reviewed carefully your
25 presentence investigation report filed on April 13, 2021 and

1 amended on May 28, 2021 and July 7, 2021?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: I can't hear you.

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Have you, in fact, reviewed those with
6 your counsel?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Still can't hear you.

9 Have you reviewed those items with your counsel,
10 sir?

11 THE DEFENDANT: Yes, sir. Yes, sir.

12 THE COURT: Is the mic on?

13 MR. SILVERMAN: It appears to be on, Your Honor.
14 The light is on.

15 THE COURT: Mr. Miner, have you been fully
16 vaccinated?

17 THE DEFENDANT: I have not.

18 THE COURT: Well, just keep your voice up when you
19 respond.

20 Have you also had an opportunity to review and have
21 you, in fact, read the following items.

22 Probation's sentencing recommendation filed
23 April 13, 2021?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Now I can hear you fine.

1 The defense counsel sentencing memorandum filed
2 July 6, 2021?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: The government's sentencing memorandum
5 filed July 8, 2021?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: In addition to those materials, I have
8 the following in my files: The criminal information filed on
9 January 22, 2021, waiver of indictment filed January 22, 2021,
10 plea agreement filed January 22, 2021, and letters filed in
11 support of the defendant.

12 Are there any other documents either counsel would
13 like to call to the Court's attention at this time beginning
14 with the government and Probation?

15 MR. McCONNELL: No --

16 THE COURT: You can remain seated, sir. Just use
17 the microphone.

18 MR. McCONNELL: No, Your Honor, other than the
19 addenda to defense counsel's submission. That's all.

20 THE COURT: The one that came in from Mr. Adam
21 Walton at the end of last week, that letter? Is that what
22 you're talking about or something else?

23 MR. McCONNELL: Yes. Yes.

24 THE COURT: Probation, anything else?

25 THE PROBATION OFFICER: No, Your Honor.

1 THE COURT: From the defense, anything else?

2 MR. SILVERMAN: No, Your Honor.

3 THE COURT: Okay. Thank you.

4 Now, Mr. Miner, do you feel prepared to go forward
5 with your sentencing today, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Miner, you have the right to address
8 the Court before I pronounce sentence. I will give you the
9 opportunity to do so in just a few minutes and you should feel
10 free to say anything you feel appropriate at that time before
11 I finalize my judgment in this case. Do you understand, sir?

12 THE DEFENDANT: I do.

13 THE COURT: Mr. Miner, sir, are you satisfied with
14 your counsel's representation?

15 THE DEFENDANT: Very much so, Your Honor.

16 THE COURT: Have you received the effective
17 assistance of counsel in your view, sir?

18 THE DEFENDANT: I have indeed, Your Honor.

19 THE COURT: If you do not believe you've received
20 the effective assistance of counsel, you may raise as a matter
21 of law a claim of ineffective assistance of counsel at an
22 appropriate time and in an appropriate forum. Do you
23 understand, sir?

24 THE DEFENDANT: I understand, Your Honor.

25 THE COURT: Now, the United States Code sets forth

1 the following parameters for a violation of one count of
2 possession of a defaced firearm in violation of Title 18 of
3 the United States Code, Section 922(k): A statutory maximum
4 imprisonment term of five years; a statutory maximum
5 supervised release term of three years; a maximum fine of
6 \$250,000; a mandatory special assessment of \$100 which I am
7 required to impose per count on individuals in all cases.

8 Additionally, as set forth in paragraph 6 of the
9 plea agreement which you signed, you have consented to the
10 forfeiture of the following items: One, an AR-15 style
11 assault weapon and silencer; two, a Mossberg 500 shotgun with
12 an obliterated serial number; three, an M&P Shield
13 9 millimeter semi-automatic pistol with an obliterated serial
14 number; four, a fully automatic Colt M4 assault rifle and
15 silencer; five, a Glock Model 19 9 millimeter semi-automatic
16 pistol with an obliterated serial number; six, two high
17 capacity magazines of ammunition; and \$2,000 in cash, all of
18 which was seized during your arrest by law enforcement
19 officials on May 12th of 2020.

20 This court must also consider the sentencing
21 parameters set by the United States Sentencing Guidelines, the
22 guidelines for Section 18 U.S.C. 922(k) offenses and
23 Section 2K2.1. Since the offense level involved a
24 semi-automatic firearm capable of accepting a large capacity
25 magazine, the base offense level is 20, pursuant to

1 Section 2k2.1(a) and its subparts, and according to
2 Section 2k2.1(b) and its subparts.

3 This offense is enhanced two levels if it involves
4 between three and seven firearms. Because your offense
5 involves three firearms, this two level enhancement applies.
6 Furthermore, according to Section 2K2.1(b)(4)(B), a four level
7 enhancement is warranted because you purchased two firearms
8 with obliterated serial numbers.

9 You have demonstrated acceptance of responsibility,
10 however, for your offense by entering a plea of guilty and
11 notifying the government in a timely manner of your intention
12 to plead guilty. Therefore, a three level reduction applies
13 under Section 3E1.1(b).

14 This calculation, sir, results in a total offense
15 level of 23.

16 The government, the defendant and Probation agree
17 with this calculation.

18 Is that true, government?

19 MR. McCONNELL: Yes, it is.

20 THE COURT: Is that true, Probation?

21 THE PROBATION OFFICER: Yes, Your Honor.

22 THE COURT: Is that true, defense counsel?

23 MR. SILVERMAN: Yes, Your Honor.

24 THE COURT: Thank you, sir.

25 The parties all agree that the defendant has a

1 criminal history category of I. An adjusted offense level
2 calculation of 23 with a criminal history category of I yields
3 a guidelines imprisonment range of between 46 and 57 months.
4 I should note that pursuant to the plea agreement, the
5 defendant has waived his right to appeal any sentence of
6 60 months or below incarceration.

7 In addition, the guidelines further suggest a term
8 of supervised release of between one and three years and a
9 fine that the defendant can pay of between \$20,000 and
10 \$200,000.

11 Counsel, beginning with the government, am I missing
12 anything pertinent to today's proceedings?

13 MR. McCONNELL: No.

14 THE COURT: Defense counsel?

15 MR. SILVERMAN: No, Your Honor.

16 THE COURT: Are there any objections other than
17 those submitted in writing to the Court which the Court has
18 reviewed?

19 MR. McCONNELL: No.

20 MR. SILVERMAN: No, Your Honor.

21 THE COURT: In that case, I will now turn it over to
22 defense counsel. Please make your presentation and feel free
23 to remain seated and use the microphone, sir.

24 MR. SILVERMAN: Thank you, Your Honor.

25 THE COURT: Of course.

1 MR. SILVERMAN: Your Honor, as I was preparing to
2 come today, I was thinking about when I first met Mr. Miner at
3 the beginning of the pandemic. A friend told me a story that
4 she had gone to the doctor and the doctor was stunned because
5 she had no trouble breathing, she was young and healthy, but
6 the x-ray showed pneumonia and the doctor couldn't explain the
7 difference between the patient in front of her and what she
8 was seeing on the x-ray. When I look at Mr. Miner's Instagram
9 posts, I am also baffled because they do not reflect the young
10 man who I have come to know over the past year and who I would
11 like to speak about for a few minutes.

12 Joseph is a son of Queens, a Mexican American
13 father, Italian American mother, both of whom are here today,
14 Patricia Miner and Michael Miner, and his fiancée Rachel Snow.
15 He grew up in America's most diverse county and one of its
16 most diverse neighborhoods in Bayside with all of the friends
17 and colleagues who you would expect.

18 He's someone who has had mental health challenges.
19 Notwithstanding those, he has remained consistently employed.
20 When he's lost jobs, he's gotten new jobs, and he has
21 maintained -- I think about, there are some baseball players
22 when they get sent down to triple A, they never come back up,
23 and there are some who really want to be in the majors and
24 they keep coming up and they keep coming up. And Joseph
25 really wanted jobs and he consistently had jobs.

1 Joseph also picked up, and this is also common in
2 eastern Queens, racism, anti-Semitism, and at the risk of
3 saying something that we all know, you know, Joseph is here
4 today because he brought, he purchased illegal guns and not
5 because of what he would describe and acknowledge as far right
6 wing views. I raise that because I think the government would
7 acknowledge, and the government will speak, but I think they
8 would acknowledge that Joseph caught the FBI's antenna because
9 of certain things that he said online that alarmed them.

10 I raise that because now he has been evaluated by a
11 forensic psychiatrist who the government selected, not a
12 defense chosen expert. It is a government selected forensic
13 psychiatrist who met with Mr. Miner as many times as he wanted
14 for as long as he wanted, asked any questions he wanted and
15 reviewed whatever records he asked for, and he wrote a
16 comprehensive report. Parts of it are tough but, overall, it
17 is fair and his bottom line conclusion is that Mr. Miner does
18 not pose a risk for terrorist violence.

19 That ranting online late at night, in Joseph's own
20 words, was the ranting of a lonely loser. He was someone who
21 had lost his way and who was engaging in Instagram much like a
22 gambling addict engages in gambling, constantly looking for
23 that refresh, that thrill, needing another one, another one to
24 distract, and social media. You get people's attention by
25 saying outrageous things and the incentives are to say more

1 and more outrageous things to get more likes, more follows,
2 more attention, and that was very addictive to a lonely
3 person.

4 Joseph knows that he's had mental health struggles
5 and when he was younger, he acknowledges that he was resistant
6 to pharmaceutical intervention. He is now taking
7 pharmaceuticals and with very good effect. When he was
8 younger, he tried a solely faith approach. I don't want to
9 belittle that because faith is an extremely important part in
10 Joseph's life and will continue to be. It will not be the
11 only way he addresses his mental health challenges going
12 forward. It was a significant way he tried to address that in
13 the past. He didn't deny he needed help. He sought help
14 without pharmacology and now he realizes he needs the
15 pharmacology as well.

16 How did Joseph end up here. Joseph wrote in his
17 diaries, his personal journals that the government provided to
18 me, for years. He was looking, he had fairly mundane goals
19 for a young man. He wanted to get more active in the church,
20 make some money, maybe join the military, maybe go for law
21 enforcement, buy some guns.

22 Joseph was moving around the country. He was living
23 with his sister in Texas. He had a job in Arizona. He
24 attended a bible college in California. These are places
25 where guns, even Texas and Arizona, even big guns are lawful

1 and normal parts of life.

2 Joseph approached the undercover agent about buying
3 guns while he still lived in New York. It was reckless. It
4 was illegal. It would have been illegal for any guns as we
5 all know here in New York City, but I note and I wrote about
6 this in the letter, in the conversations that proceeded that,
7 the government's informant repeatedly asked what are you going
8 to do and suggested political and anti-Semitic and racist
9 violence and Joseph was clear that he's not interested in
10 that. He was clear that he disavows that. He wasn't saying
11 things that I would necessarily like to hear someone say,
12 saying that he doesn't like Jewish people, he was talking
13 about immigrants in ways that I wouldn't talk about, right,
14 but he was saying no, I'm not going to go attack people.

15 He was worried in April and May of 2020 that there
16 was going to be a breakdown in law and order and he wrote in
17 his journal he was going to leave a gun with his parents and
18 he was going to move with his fiancée in Virginia where she
19 lives and where guns are more lawful than they are here.

20 He agreed with the suggestion to purchase guns
21 without serial numbers and a silencer. It was clearly
22 illegal. It was clearly wrong. It was his choice. He was
23 not entrapped, he acknowledges that, but he was not seeking
24 out weapons of war. He was -- in paragraph 10 of the PSR, it
25 describes the guns he went out to look for. One was a

1 Mossberg 500. It's a gun that one hunts birds with, one of
2 the best selling shotguns in the country, and the other was a
3 pistol. He was suggested to buy an AR. He chose to buy an
4 AR, he's responsible for buying the AR, but he was not going
5 out and looking for the kinds of weapons one would use in a
6 mass attack. And even shortly after he bought other items
7 like body armor --

8 THE COURT: I just want to be clear. You're telling
9 the Court that ARs are not weapons used in mass attacks?

10 MR. SILVERMAN: No, Your Honor. Thank you for
11 allowing me to clarify.

12 Joseph first approached the informant about
13 purchasing five guns, two for himself, a Mossberg and a
14 pistol, and then the undercover suggested other guns and
15 Joseph ended up deciding to buy other guns. So my only point
16 was when he first went out to buy guns, the guns that he was
17 initially looking for were a Mossberg 500 and a pistol, not an
18 AR, but he definitely agreed to buy an AR.

19 THE COURT: And he did buy an AR.

20 MR. SILVERMAN: And he did buy an AR.

21 THE COURT: And that is a weapon that's used in mass
22 shootings, isn't it?

23 MR. SILVERMAN: It sure could be, Your Honor.

24 THE COURT: It has been, hasn't it?

25 MR. SILVERMAN: I believe that's so.

1 THE COURT: You believe it's so?

2 MR. SILVERMAN: I'm being cautious as a lawyer
3 because I don't know exactly but I believe it's very, very
4 likely.

5 THE COURT: You don't know whether ARs have been
6 used in mass shootings in the United States of America within
7 the last year? Is that what you're telling the Court as an
8 officer of this court?

9 I just want to know whether you are telling this
10 court that you are unaware that AR-15s have been used in mass
11 shootings in the United States of America in the last year.
12 Is that what you're telling me? You can tell me that if
13 that's what your understanding is.

14 MR. SILVERMAN: No, Your Honor.

15 THE COURT: You do understand that AR-15s have been
16 used in mass shootings in this country, do you understand
17 that?

18 MR. SILVERMAN: I believe so.

19 THE COURT: You believe it's so or you know it's
20 so?

21 MR. SILVERMAN: I, I, I accept Your Honor's --

22 THE COURT: I'm asking you a question about your
23 knowledge, as an officer of the Court, whether you know that
24 AR-15s have been used in mass shootings in the United States
25 of America. If you don't know, you can tell me that.

1 MR. SILVERMAN: I don't have specific knowledge.

2 THE COURT: Do you have general knowledge that
3 AR-15s have been used in mass shootings in this country
4 including places like grammar schools in Connecticut? Do you
5 not understand that? Do you not know that?

6 MR. SILVERMAN: I have general knowledge, yes,
7 Your Honor.

8 THE COURT: Do you have specific knowledge of it?
9 What do you mean, general knowledge? Do you know or don't you
10 know?

11 MR. SILVERMAN: I think -- I don't -- I haven't
12 followed the specifics of the kinds of weapons in these cases
13 but I think that that's right.

14 THE COURT: Go on.

15 MR. SILVERMAN: And he bought the guns and he
16 acknowledges he bought the guns and it was wrong.

17 I would just say in summation, Your Honor, Joseph, I
18 know from talking to him, is quite ashamed of things that he's
19 written.

20 He is getting medication that he needs. The
21 forensic psychiatrist assesses him the way I, as an amateur,
22 I'm a lawyer, not a psychiatrist, but as I have seen him which
23 is not someone who would commit violence, someone who runs his
24 mouth, someone who rants late at night but who in his daily
25 dealings in every day life works with Jewish people, works

1 with immigrants, works with African-Americans and is a
2 productive member of our diverse society and has demonstrated
3 with his actions that that's what he is and I believe that
4 Dr. Katsavdakakis' report is exactly right.

5 In addition, the parties, we understand that the
6 supervised release terms are the Court's to determine. They
7 are proposed in the plea agreement and any terms like those
8 are far more stringent than ordinary and would provide an
9 extra layer of protection but the Joseph who I know, the
10 Joseph who his family knows and the Joseph who the
11 government's chosen forensic psychiatrist saw is not a
12 dangerous person. He's someone who made a terribly boneheaded
13 decision but who is not someone who harms people.

14 Unless the Court has any questions, Mr. Miner I know
15 would like to address the Court if this is the right time.

16 THE COURT: Yes. Mr. Miner, you may address the
17 Court now.

18 THE DEFENDANT: Thank you, Your Honor.

19 Your Honor, I would just like to say that the
20 appalling nature of some of my social media discourse is
21 self-evident. It really goes without saying.

22 I completely understand how certain of the
23 statements that I made would and indeed did trigger a federal
24 investigation and intervention into my life. I take full
25 responsibility for the consequences of employing this kind of

1 rhetoric and I also accept responsibility for my reckless,
2 foolhardy and criminal decision to purchase firearms
3 illicitly.

4 My actions have brought great shame and trouble to
5 not only myself but to my family, my loved ones and my
6 co-defendant as well for being associated with me. I deeply
7 regret this blunder which is, by far, the worst and most
8 serious of my life and I have certainly been known to make a
9 blunder or two.

10 That being said, while I sit before you today, I
11 would like to most emphatically state that I am not a
12 terrorist. It is simply not in my heart to go out into the
13 world and commit an atrocity. I'm aware that some of my
14 statements would seem to contradict that but I know my heart
15 and what I am capable and not capable of doing.

16 Since my teenage years, I have battled with
17 maintaining my mental health and this is something I may have
18 to battle with for the rest of my life. This along with
19 personal grievances I've experienced and certain cultural
20 struggles that have been manifested openly in our nation over
21 recent years worked together to lead me to the point that I
22 came to.

23 I know that Your Honor has likely heard all sorts of
24 excuses and reasons for one's criminal conduct in other cases
25 in the past. I do not excuse my criminal act. I'm simply

1 stating the truth even as it is supplemented by official
2 investigative work in regards to my case.

3 I would also like to freely admit that I am rather
4 eccentric in my personality and interests which although this
5 is, of course, not punishable by law, perhaps it's exacerbated
6 the scrutiny that I've come under.

7 Your Honor, my time of incarceration at the
8 Metropolitan Detention Center has been life changing. Though
9 it's been particularly difficult due to extensive coronavirus
10 related precautions, it has been a time of serious reflection
11 and renewal. It goes without saying how much I regret my
12 crime. I was filled with regret, not to mention shock, but I
13 was filled with regret the instant of my arrest and I continue
14 to regret it and although I continue to have to work through
15 residual bitterness over my situation, bitterness which I have
16 expressed, I'm fully confident I will come through on the
17 other side of this ordeal a far better man. Growth and
18 maturity is a process and wisdom is often hard learned.

19 I gladly accept the conditions imposed upon my
20 release by the government. I understand and accept that I
21 will receive the help I need and keep myself accountable to
22 the proper authorities. We have a comprehensive plan in place
23 which I am committed to abiding by.

24 On another note, I also have the most beautiful
25 goals I've ever had in my life with my fiancée Rachel who sits

1 right here next to my parents. Namely, we plan to marry and
2 to start a family which will fulfill my purpose and keep me on
3 the right track. My goal in the future awaits me just outside
4 these walls. I'm not jumping back into the world without a
5 plan for success and set goals in mind.

6 The young man I was prior to my arrest is not the
7 man I will be for the rest of my life, Judge Kuntz. This was
8 all merely a chapter of my life and I refuse to let it define
9 my whole story. Your Honor, I'm ready to accept whatever
10 sentence that the Court deems best and although, like any
11 other prisoner, I hope for some mercy in my case, I completely
12 accept the consequences of my decisions whatever they may be.

13 Thank you for your time, Your Honor.

14 THE COURT: Thank you, Mr. Miner.

15 I'll hear from the government and then from
16 Probation if you wish to be heard.

17 MR. McCONNELL: Thank you, Your Honor.

18 I think we all want to believe everything that we
19 just heard from the defendant and Mr. Silverman and I should
20 say, at the outset, I, by and large, take at face value the
21 majority of what was just said. I also had the opportunity to
22 meet Mr. Miner prior to today. He presented much as he just
23 did before the Court, as a very smart, well-spoken man. He
24 was blessed with many gifts including a supportive family.

25 So there is certainly some powerful mitigation that

1 Your Honor needs to consider when fashioning a sentence, but I
2 don't think it's mitigation that warrants a sentence that
3 Mr. Silverman is asking for. The government is recommending a
4 sentence at or near the top of the guidelines. I'm not going
5 to repeat everything that we put in our sentencing memo, but
6 based on the arguments here today, I think it's important to
7 highlight a few points.

8 First, to be clear, this is not about Mr. Miner's
9 opinions, it's not about his politics, it's about what he did
10 and the things that he was saying went far beyond political
11 hyperbole or bigoted views or anything like that. He has the
12 absolute right to hold and express those opinions but that's
13 not what he was doing leading up to his arrest. He was
14 espousing and glorifying violence. Violence has no politics.
15 It has no ideology. He was talking about committing acts of
16 violence himself and I want to say in open court, it would
17 have been an abdication of law enforcement's responsibility to
18 let that go unnoticed and uninvestigated.

19 So that's sort of the starting point here. So let's
20 talk about what he did.

21 Prior to him reaching out to the undercover officer
22 in this case -- not the other way around, he reached out to
23 the undercover -- prior to that, Mr. Miner had already
24 purchased a bulletproof vest with a Nazi emblem on the chest,
25 he had purchased a tactical helmet like one would wear on the

1 battlefield and had made inquiries at a pawn shop about buying
2 various weapons including an AR-15. That is all prior to any
3 involvement from the undercover in this case.

4 After he reached out to the undercover, he was not
5 pushed into doing anything that he did not want to do. This
6 is not someone who was tricked or deceived into doing
7 something out of character or ensnared in some sort of
8 government sting. He reached out to the undercover and when
9 presented with the opportunity to buy this arsenal of weapons,
10 he didn't hesitate.

11 You know, it's hard to know what's in someone's
12 heart and we'll never know what Mr. Miner would have done if
13 left to his own devices but, you know, given every indication
14 that law enforcement was privy to, it was quite clear that he
15 was planning something potentially terrible. He was a time
16 bomb waiting to go off. He expressed that himself to other
17 people in his communications. And, you know, he was following
18 down a path that people before him have followed where the end
19 results are acts of horrific violence.

20 That's not to say that at times, he did not, you
21 know, disavow violence or lone wolf tactics. He did not seek
22 to affiliate himself with any particular group. That is all
23 true but for every disavowal, there was some other
24 communication where he expressed a hateful, violent statement
25 that indicated, you know, the exact opposite. So it's very,

1 very tough to sort of parse the things that he said
2 historically.

3 You know, there were times when he was talking about
4 things where he would cut off the conversation about weapons
5 or violence because he was on an open line with the person
6 that he was talking to and suggested that they move to
7 encrypted communications. So we just don't know what he would
8 have done if left to his own devices and, frankly, I think
9 we're all happy that we didn't find out particularly with what
10 was going on in this city and around the country shortly after
11 he was arrested.

12 That's really the challenge before the Court when
13 fashioning the sentence, what is he going to do when he's left
14 to his own devices, when he's not incarcerated, when he's not
15 under supervision of the Bureau of Prisons and told when to
16 lock in every night. Your Honor can impose jail. Your Honor
17 can impose the strict conditions of release. They're
18 certainly appropriate. We agree to those. The defendant
19 agreed to those. Your Honor can impose a rigorous plan of
20 psychiatric treatment but it really comes down to him and his
21 ability or willingness to follow treatment plans in the past
22 is not particularly promising and that's a real concern.

23 I think we all hope for the best and we wish him the
24 best and we think that this experience hopefully has been
25 humbling and hopefully has changed him in the way that he has

1 just described, but the reality is when you look at this
2 offense conduct and you look at his history and
3 characteristics and you consider all of the 3553(a) factors,
4 it's the government's position that a sentence at or near the
5 top of the guidelines is the only appropriate one and we ask
6 that Your Honor so find.

7 Thank you.

8 THE COURT: Thank you, Counsel.

9 I will hear from Probation if you wish to make a
10 estimate, sir.

11 THE PROBATION OFFICER: Nothing to add other than
12 what's in the recommendation, Your Honor.

13 THE COURT: Thank you, sir.

14 The Court has this to say. Mr. Miner, perfect
15 justice in your case would involve a power that neither I nor
16 any judge nor any human being for that matter has in his or
17 her hands. It is challenging and humbling for me to sit here
18 as the court and to pass sentence on a fellow human being.

19 This case impacts your family and the Court notes
20 with pride their presence and support and urges they continue
21 to be supportive to you throughout your life. This case
22 impacts the victims of your crime. Ultimately, of course,
23 this case impacts you because this case is ultimately about
24 you, about what you did, not what you believed, but what you
25 did that brought us here today, a day of sadness and a day of

1 tragedy.

2 On May 13th of 2020, the United States of America
3 filed a criminal complaint against Joseph Miner, the defendant
4 in this case. That complaint alleged one count of possession
5 of a defaced firearm in violation of Title 18, United States
6 Code, Section 922(k). On January 22nd of 2021, the defendant
7 waived indictment and pled guilty to a criminal information
8 charging him with the same count of possession of a defaced
9 firearm.

10 The Court hereby sentences this defendant and sets
11 forth its reasons for the defendant's sentence using the
12 rubric of the 18 U.S.C. Section 3553(a) factors pursuant to 18
13 U.S.C. Section 3553(c)(2). I begin with the legal standard.

14 Title 18 of the United States Code, Section 3553
15 outlines the procedures for imposing sentence in a criminal
16 case.

17 The starting point and initial benchmark in
18 evaluating a criminal sentence is the guidelines sentencing
19 range pursuant to Gall versus United States, 552 U.S. 38, 49,
20 decided in 2007.

21 If and when a District Court chooses to impose a
22 sentence outside the sentencing guidelines range, the court
23 shall state in open court the reasons for its imposition of
24 the particular sentence and the specific reason for the
25 imposition of a sentence different from that described in the

1 guidelines. The court must state with specificity its reasons
2 for so departing in a statement of reason form.

3 The sentencing court's written statement of reasons
4 shall be a simple fact specific statement explaining why the
5 guidelines range did not account for a specific factor or
6 factors under Section 3553(a) decided by my recently departed
7 brother Judge, Jack Weinstein, a member of the greatest
8 generation, in United States versus Davis, 8-CR-332, 2010,
9 Westlaw 1221709 at star 1, decided by my late brother
10 Judge Weinstein on March 29th of 2010.

11 Section 3553(a) provides a set of seven factors for
12 this court to consider in determining what sentence to impose
13 on a criminal defendant. This court now addresses each in
14 turn. The analysis begins considering the nature and
15 circumstances of the offense and the history and
16 characteristics of the defendant.

17 The first 3553(a) factor requires this court to
18 evaluate the nature and circumstances of the offense and the
19 history and characteristics of the defendant. 18 U.S.C.
20 Section 3553(a)(1). Family and personal background are
21 addressed.

22 The defendant was born and raised in an intact
23 family setting with a twin brother and his parents, the latter
24 of which continue to live and work in Queens. His brother
25 resides in Denton, Texas and is currently facing prosecution

1 for two counts for witness tampering in the Eastern District
2 of Texas. Additionally, the defendant has four paternal half
3 siblings. The defendant reported an unremarkable childhood
4 free from any abuse. The defendant himself is not yet married
5 or fathered any children, but has a good relationship with his
6 fiancée who is here today and the Court acknowledges her
7 presence and support.

8 The defendant is in good physical health but
9 experiences feelings of depression which began as a teenager
10 and was diagnosed with manic depression and bipolar disorder
11 when he was some 20 years old which is to say ten years ago.
12 Additionally, the defendant received counseling at Pride of
13 Judea in Queens for one year and took prescription medication
14 to treat that depression and bipolar disorder, however, in
15 2012, he decided he would cease the medical treatment and he
16 opted instead to rely on spiritual counseling and prayer alone
17 to manage his symptoms. The defendant has recently begun
18 taking a common atypical antipsychotic medication and defense
19 counsel notes and has noted here today that the defendant has
20 recommitted to psychiatric medication and the Court commends
21 the defendant for doing so.

22 The defendant has a history of substance abuse. He
23 reported regular use of marijuana for several years until his
24 arrest, intermittent cocaine use and the use of hallucinogens
25 such as mushrooms and Salvia. Additionally, the defendant has

1 a history of binge drinking beginning in college until this
2 offense and was arrested and charged with driving while
3 intoxicated. In 2014, the defendant completed a nine or ten
4 month inpatient drug treatment program in Illinois and
5 requested additional drug treatment counseling during his
6 present incarceration.

7 The defendant's highest levels of education
8 attainment included attending Queens College for two years and
9 earning a one year Bible certificate from West Coast Baptist
10 College in California. He previously graduated from the
11 Benjamin Cardozo High School in Queens. The defendant most
12 recently worked as a counterperson in a delicatessen but has
13 also held jobs as canvasser, real estate salesman, a
14 chauffeur, roofer, helper, driver, cleaner and laborer for
15 seven different employers over a five year period. The
16 defendant failed to file income tax returns in 2017, 2018 and
17 2019.

18 Addressing the defendant's history of racist and
19 anti-Semitic behavior, since at least 2019, the defendant has
20 publicly engaged in certain behavior including posting the
21 following statements on his social media.

22 A photograph of himself giving a Nazi salute and
23 writing: "God, I hate women, Jews and niggers."

24 He posted a photograph of himself giving a Nazi
25 salute displaying a large knife and writing: "Overthrow Jews,

1 overthrowing Jews is our Christian duty."

2 In response to a bloody crime scene photograph from
3 the December 2019 machete attacks at a synagogue, a house of
4 prayer in Monsey, New York, he wrote the comment, and I quote:
5 "Not gonna lie, this is pretty fucking exciting."

6 In response to a post lamenting the recent spate of
7 anti-Semitic attacks in greater New York City, he wrote:
8 "Heil Hitler," but he misspelled "Heil."

9 He posted a photograph of a Planned Parenthood
10 office being blown up by the comic book villain the Joker.

11 And he posted an article describing his arrest,
12 describing the arrest of 26-year old Israeli national for
13 cashing a false check with his written post that: "Jews must
14 have a genetic devotion to the number 6. 666, 6 million, et
15 cetera."

16 This defendant further glorified and fantasized
17 about mass shooting attacks. He wrote and posted about
18 "martyring" himself and "going out in a blaze of glory" and
19 publicly considered "going out firing, going on a spree after
20 my enemy until the authorities take me out. Sometimes I've
21 considered forming a well trained INCEL hit squad."

22 In another series of posts on January 3, 2020, this
23 defendant wrote: "I want to go out shooting the cops cost.
24 Take out a bunch of enemies and die shooting."

25 In a post on February 14, 2020, this defendant

1 wrote: "To be honest, dying fighting Paki and African pieces
2 of shit in Europe wouldn't be the worst way to go, die a
3 hero."

4 Now, this defendant attempted to acquire serious
5 weaponry to further his White Nationalist and White
6 Supremacist ambitions. In November of 2019, he posted about
7 acquiring weapons for "Boogaloo" purposes. Boogaloo is a well
8 known slang for racial civil war in the United States. And
9 this defendant later discussed his hopes for the onset of
10 RaHoWa, R-A-H-O-W-A, or a racial holy war. While
11 contemplating a move to Texas, where he wrote, a man can "own
12 his guns" without having to "beg police, judge and detective
13 for permission just for a pistol. Beg on your knees like a
14 bitch."

15 And yet another November 2019 post in an apparent
16 reference to the 2017 White Supremacist rally in
17 Charlottesville, Virginia which killed a young woman who was
18 peacefully there, he wrote, "I am pretty serious at this
19 point. I yearn for the next C-ville."

20 While in some statements, this defendant, as his
21 counsel pointed out, attempted to play down his propensity for
22 violence, for instance, by claiming that he needed these
23 weapons for self-defense and while claiming he was "so tame,
24 he's no real threat." He at other times wrote: "Some day, I
25 will probably have to shed my blood or go to prison for the

1 things I do and stand for."

2 Even more importantly, this defendant sought time
3 and again to obtain tactical military gear and firearms
4 leading up to the instant offense.

5 In January of 2020, this defendant purchased body
6 armor as we've heard from the government emblazoned with the
7 iteration of the Wolfsangel, a Nazi party symbol that most
8 recently has been adopted by Azov Battalion, a Ukrainian
9 militia group.

10 In February 2020, this defendant called upon a shop
11 as we heard in Texas and inquired about purchasing assault
12 weapons as well as purchasing a Mossberg shotgun. On
13 March 30th of 2020, this defendant purchased a tactical
14 ballistic helmet as we heard and he posted a photo of it on
15 Instagram.

16 On April 20, 2020, this defendant began
17 communications with, unknown to him, an undercover officer
18 seeking to buy two firearms, a Smith and Wesson Shield M2.0
19 9 millimeter pistol and a Mossberg 500 shotgun, along with
20 ammunition. This defendant expressed interest in buying an
21 assault rifle when he had more money in the future. This
22 defendant suggested to the undercover officer that further
23 communications occur over encrypted messaging platforms and
24 expressed interest in acquiring defaced weapons, i.e., weapons
25 without serial numbers or other identifying marks.

1 On April 27th of 2020, this defendant contacted the
2 undercover officer via the encrypted messaging platform and
3 confirmed he wished to purchase the firearms they had
4 previously discussed. This defendant told the undercover
5 officer to, quote, unquote, "bring the Shield 9 millimeter
6 pistol, the Mossy, the shotgun and that ghost with attachment,
7 the AR-15 with silencer, you mentioned, and maybe a few boxes
8 of ammunition beside.

9 This defendant also asked the undercover officer for
10 additional firearms, referring to a KelTec P382 semi-automatic
11 pistol. The undercover officer again informed this defendant
12 via text: The serial numbers are all cleaned off so they're
13 clear, no trace and good to go. I will have the ghost AR and
14 come with some other long guns for you guys."

15 On May 12th of 2020, this defendant met two
16 undercover officers at a hotel in Queens, New York to
17 consummate the transaction. There, this defendant purchased
18 the AR-15 style ghost gun with a silencer, a Mossberg 500
19 shotgun with an obliterated serial number and an M&P Shield
20 9 millimeter semi-automatic pistol with an obliterated serial
21 number. Then the defendant was arrested on the same day and
22 has been in custody ever since.

23 The second 3553(a) factor instructs this court to
24 consider the need for the sentence imposed to reflect the
25 seriousness of the offense, to promote respect for the law and

1 to provide just punishment for the offense, to provide and to
2 afford adequate deterrence to criminal conduct, to protect the
3 public from further crimes of the defendant and to provide the
4 defendant with needed educational or vocational training,
5 medical care or other correctional treatment in the most
6 effective manner.

7 The instant sentence adequately punishes this
8 defendant for his crimes and provides both general and
9 specific deterrence. Furthermore, a period of incarceration
10 will protect the public from the defendant's inclination
11 toward violence, racist and anti-Semitic behavior. Through
12 both incarceration and a period of supervised release, this
13 defendant will have an opportunity to rehabilitate and
14 reintegrate into society.

15 The third 3553(a) factor requires the Court to
16 detail the kind of sentence available for the defendant.

17 On January 22nd, as I previously stated, of 2021,
18 the defendant waived indictment and pled guilty to a criminal
19 information charging him with possession of a defaced firearm
20 in violation of 18 U.S.C. Section 922(k).

21 The defendant faces, as I stated before, and as the
22 parties have all agreed, a maximum term of five years
23 imprisonment, that is to say 60 months. Additionally, the
24 Court may impose a term of supervised lease not to exceed
25 three years, a maximum fine of \$250,000, a mandatory special

1 assessment of \$100. The defendant may be required to pay the
2 cost of prosecution. And the Court may order restitution to
3 be paid to any victim of the offense under 18 U.S.C.
4 Section 3663(a)(1)(A).

5 The fourth 3553(a) factor requires the Court to
6 discuss the kinds of sentence and the sentencing range
7 established for the applicable category of offense committed
8 by the applicable category applicable to this defendant as set
9 forth in the guidelines.

10 As you've heard from all the parties, the guidelines
11 recommend a sentence of between 46 and 57 months of custody.
12 The guidelines for 18 U.S.C. Section 922(k) offenses,
13 Section 2K2.1. Since the offense involved a semi-automatic
14 firearm capable of accepting a large capacity magazine, the
15 base offense level is 20. U.S.S.G.
16 Section 2K2.1(a)(4)(B)(ii).

17 The offense is enhanced by two levels if it involves
18 between three and seven firearms pursuant to U.S.S.G.
19 Section 2K2.1(b)(1)(A). Because, as stated, the instant
20 offense involves three firearms, this two level enhancement
21 applies. Furthermore, a four level enhancement is warranted
22 because the defendant purchased two firearms with obliterated
23 serial numbers pursuant to U.S.S.G. Section 2K2.1 (b)(4)(B).

24 The defendant has, as previously noted, accepted
25 responsibility for his offenses by entering a plea of guilty

1 and notifying the government in a timely fashion of his
2 intention to pled guilty. Therefore, a three level reduction
3 applies pursuant to U.S.S.G. Section 3E1.1(a) through (b).

4 This calculation results in the total offense level
5 of 23 and as previously stated and confirmed in court, the
6 parties all agree this calculation is accurate and further
7 agrees the defendant has a criminal history category of I.
8 The adjusted offense level calculation is 23 and, with a
9 criminal history category of one, yields a guideline
10 imprisonment range of 46 to 57 months.

11 We address the parties' recommendation which you
12 heard in open court today. The parties provided divergent
13 recommendations to this court based upon the guideline
14 sentencing range. Defense counsel recommends a below
15 guideline sentence of 30 months in prison emphasizing the
16 defendant's willingness to engage in proper medical treatment.
17 Probation recommends a sentence of 57 months of imprisonment
18 which is at the top of the guidelines range. The government
19 recommends a sentence at or near the top of the guidelines
20 range.

21 Furthermore, as outlined in paragraph 6 of the plea
22 agreement and as you've heard today, this defendant consents
23 to the forfeiture of the following, the AR-15 style assault
24 weapon and silencer, the Mossberg 500 shotgun with obliterated
25 serial number, the MP Shield 9 millimeter semi-automatic

1 pistol with obliterated serial number, fully automatic Colt
2 M-467 assault rifle and silencer, Glock Model 199 millimeter
3 semi-automatic pistol with obliterated serial number, two high
4 capacity magazines and ammunition and \$2,000 in cash, all of
5 which was seized as previously noted on May 12, 2020.

6 The fifth 3553(a) factor requires this court to
7 evaluate any pertinent policy statement issued by the
8 Sentencing Commission under 18 U.S.C. 3553(a)(5). The Court
9 finds that's not pertinent to the defendant's sentencing here
10 today.

11 The sixth 3553(a) factor requires this court to
12 consider the need to avoid unwarranted sentence disparities
13 among defendants with similar records who have been found
14 guilty of similar conduct, 18 U.S.C. Section 3553(a)(6). For
15 the reasons stated in this memorandum and order and
16 considering the other six 3553(a) factors, this court's
17 sentence avoids unwarranted sentence disparities.

18 Lastly, the seventh 3553(a) factor requires this
19 court to touch upon the need to provide restitution to any
20 victims of the offense. This factor is not relevant to the
21 defendant's sentence.

22 So finally, Mr. Miner, the Court has this to say to
23 you as it pronounced its sentence.

24 The great American poet Maya Angelou captured the
25 essence of your case when she wrote: When someone shows you

1 who they are, believe them.

2 You have shown this court not only who you are, but
3 more importantly what you are: A racist, anti-Semitic,
4 misogynistic, gun buying criminal, a man whose actions but for
5 the skill and dangerous intervention by law enforcement
6 officers who put their lives on the line presented a clear and
7 present danger to the American Republic.

8 Like the author of "Mein Kampf" who you purport to
9 admire, you have revealed yourself to be a full-blown Nazi and
10 trust me, this judge does not need to see the second edition
11 of "Mein Kampf" pursued here in the Eastern District of
12 New York where my hero fellow Judges Jack Weinstein, Ira
13 Glasser, Hurley and Platt fought as members of the greatest
14 generation to defeat the Nazis, not in my court, not on my
15 watch, not in my country, never again.

16 The Court hereby sentences you to 57 months of
17 incarceration to be followed by three months of supervised
18 release. Now also I am imposing a \$100 special assessment
19 which is appropriate and which comports with the dictates of
20 3553 and I'm required to impose that per count in every case.
21 This sentence is consistent with and is sufficient but no
22 greater than that necessary to accomplish the purposes of
23 3553(a)(2).

24 As a condition of supervised release, this court
25 adopts the special conditions as well as the regular

1 conditions of probation and now directs the Probation
2 Department to read those conditions slowly and carefully into
3 the record. The Court adopts them subject to any errors of
4 law contained therein.

5 Please read them now, sir.

6 THE PROBATION OFFICER: Your Honor, just a quick
7 question.

8 THE COURT: Keep your voice up with your quick
9 question and use the mic.

10 THE PROBATION OFFICER: Yes, sir. Are you also
11 adopting the conditions in the plea agreement?

12 THE COURT: Yes, as agreed to and as I stated
13 earlier. Yes, those are adopted as well. Go ahead.

14 THE PROBATION OFFICER: The defendant shall
15 undergo --

16 THE COURT: I'm going to ask you to channel your
17 inner Lord Vader speech patterns and slow it down, not your
18 inner Chris Rock, Woody Allen. Go ahead.

19 THE PROBATION OFFICER: Yes, Your Honor.

20 The defendant shall undergo a substance abuse
21 evaluation and if deemed necessary, participate in an
22 outpatient drug treatment program approved by the United
23 States Probation Department. The defendant shall contribute
24 to the cost of such treatment, not to exceed an amount
25 determined reasonable by the Probation Department's sliding

1 scale for substance abuse treatment services and shall
2 cooperate in securing any applicable third-party payment such
3 as insurance or Medicaid. The defendant shall disclose all
4 financial information and documents to the Probation
5 Department to assess his ability to pay.

6 The defendant shall not consume any alcohol or other
7 intoxicants during and after treatment unless granted a
8 prescription by a licensed physician and proof of same is
9 provided to the Probation Department. The defendant shall
10 submit to testing during and after treatment to ensure
11 abstinence from drugs and alcohol.

12 The defendant shall report to the Probation Office
13 any and all electronic communications, service accounts as
14 defined in 18 U.S.C. 2510(15), used for use of communications,
15 dissemination and/or storage of digital media files, example,
16 audio video images. This includes but is not limited to
17 e-mail accounts, social media accounts and cloud storage
18 accounts.

19 The defendant shall provide each account identifier
20 and password and shall report the creation of new accounts,
21 changes in identifiers and/or passwords, transfer, suspension
22 and/or deletion of any account within five days of such
23 action. Failure to provide accurate account information may
24 be grounds for revocation of release. The defendant shall
25 permit the Probation Office to assess and search for any

1 account using the defendant's credentials pursuant to this
2 condition only when reasonable suspicion exists that defendant
3 has violated a condition of his supervision and that accounts
4 to be searched contains evidence of this violation. Failure
5 to submit to such a search may be grounds for revocation of
6 release.

7 The defendant shall cooperate with the Probation
8 Department's computer and internet monitoring program.
9 Cooperation shall include but not be limited to identifying
10 computer systems, internet capable devices and/or similar
11 electronic devices the defendant has access to and allowing
12 the installation of monitoring software hardware on said
13 devices at the defendant's expense. The defendant may be
14 limited to possessing only one personal internet capable
15 device to facilitate our department's ability to effectively
16 monitor his internet related activities. The defendant shall
17 also permit random examinations of said computer systems,
18 internet capable devices and similar electronic devices and
19 related communication -- I'm sorry -- and related computer
20 peripheral such as CDs under his control.

21 The defendant shall not associate in person, through
22 mail, electronic mail, the internet, social media, telephone
23 or any other means with any individual with an affiliation to
24 an organized crime group, gangs or any other criminal
25 enterprise nor shall the defendant frequent any establishment

1 and/or locale where these groups may meet pursuant but not
2 limited to a prohibited list provided by the Probation
3 Department.

4 There is also a search condition. The model search
5 condition is recommended which in this case, the defendant
6 shall submit his person, property, house, residence, vehicle,
7 papers, computers, other electronic communications or data
8 storage devices or media or office to a search conducted by a
9 United States Probation Officer. Failure to submit to a
10 search may be grounds for revocation of release. The
11 defendant shall warn any other occupants that the premises may
12 be subject to searches pursuant to this condition. An officer
13 may conduct a search pursuant to this condition only when
14 reasonable suspicion exists that the defendant has violated a
15 condition of his supervision and that the areas to be searched
16 contain evidence of this violation. Any search must be
17 conducted at a reasonable time and in a reasonable manner.

18 Defendant also agrees to participate in polygraph
19 examinations required by the Probation Department to obtain
20 information necessary for risk management and correction.

21 The defendant also agrees to abstain from creation
22 and of use of social media accounts for a period of six months
23 upon release.

24 Finally, the defendant agrees to location monitoring
25 for a period of 12 months.

1 Your Honor, the Probation Department has a request
2 with respect to the location monitoring for twelve months.
3 Such a long period is a burdensome to the Probation
4 Department.

5 THE COURT: Deal with it.

6 THE PROBATION OFFICER: Yes, Your Honor.

7 THE COURT: Deal with it.

8 Anything else from Probation?

9 THE PROBATION OFFICER: No, Your Honor.

10 THE COURT: Anything else from the government?

11 MR. McCONNELL: No, Your Honor.

12 THE COURT: Anything else from defense counsel?

13 MR. SILVERMAN: Yes, Your Honor.

14 We respectfully request that the Court recommend to
15 BOP that it designate Mr. Miner to serve his sentence in
16 northern Virginia or near there. That's where his fiancée
17 lives and where he plans to live upon his release.

18 THE COURT: Any objection?

19 MR. McCONNELL: No.

20 THE COURT: I will make that recommendation in the
21 judgment to the BOP.

22 MR. SILVERMAN: Thank you, Your Honor.

23 THE COURT: Thank you.

24 Anything else, Counsel?

25 MR. SILVERMAN: No, that's it. Thank you,

1 Your Honor.

2 THE COURT: Anything else from you, Mr. Miner?

3 THE DEFENDANT: Nothing I should say in court.

4 MR. SILVERMAN: Thank you, Your Honor.

5 THE COURT: Nothing you should say in court?

6 Anything you want to say? Feel free to say it.

7 MR. SILVERMAN: Your Honor --

8 THE COURT: Anything else you want to say,

9 Mr. Miner?

10 THE DEFENDANT: God bless you.

11 THE COURT: Yes. God bless you.

12 We are adjourned.

13 (Matter concluded.)

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21 I certify that the foregoing is a correct transcript from the
22 record of proceedings in the above-entitled matter.

23

/s/ Charleane M. Heading

September 12, 2013

24

CHARLEANE M. HEADING

DATE

25